



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/165081

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephone hearing was held on June 24, 2015. The record was held open for 10 days to allow the petitioner to supply additional documentation. No documentation was received post-hearing.

The issue for determination is whether petitioner is eligible for payment by the MA program for diabetic shoes and custom inserts, as requested in P.A. # [REDACTED]

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Chucka, OTR (written appearance only)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On February 17, 2015, petitioner's provider (prescribing physician), [REDACTED], requested prior authorization (P.A. # [REDACTED]) for MA coverage of diabetic shoes and custom inserts for petitioner at a total cost of \$197.38. Exhibit 3.
3. On February 23, 2015, the respondent denied the PA request, informing the petitioner of the decision by a letter entitled "BadgeCare Plus Notice of Appeal Rights". Exhibit 3.
4. Petitioner has a diagnosis of diabetes mellitus, mononeuritis, and ankle pain; petitioner's mobility is good/fair with walker or cane. Petitioner has no documented foot deformities. Exhibit #1.

DISCUSSION

This is a denial of eligibility for services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

The evidence in the record of this matter does not support a conclusion that petitioner has any of the diagnoses or clinical conditions necessary for approval of a PA for the requested orthopedic shoes and inserts; in particular, petitioner is not in a postsurgery condition, petitioner does not have gross deformities, and the requested shoes are not to be attached to a brace or bar; additionally, the requested shoes are not to be attached to a brace for prosthesis, are not mismatched shoes involving a difference of a full size or more, and are not shoes that are modified to take into account discrepancy in limb length or a rigid foot deformity. Exhibit #1.

Orthopedic or corrective shoes or foot orthoses are covered by MA only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions must be described in the PA request. Wis. Admin. Code § DHS 107.24(4)(f) (March 2007); See also, Wis. Admin. Code § DHS 107.24(2)(c)2. The evidence in the record of this matter is that none of these conditions fit petitioner's circumstances. Therefore, the respondent's denial of PA must be sustained.

I note to the petitioner the following information contained in respondent's April 16, 2015, correspondence (Exhibit 3):

Because the PA request was denied based on the absence of a diagnosis that qualifies for coverage, the OIG recommends that the member share this summary letter and attachment with his healthcare team. If the member's physician is able to document diagnosis or condition that qualifies for coverage of the requested items, the services may not require prior authorization as stated in Update 2014-64.

Exhibit 3. The petitioner would be well advised to share the April 16, 2015, letter with his provider, if he has not already done so.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for the orthopedic shoes and inserts requested in P.A. # [REDACTED].

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

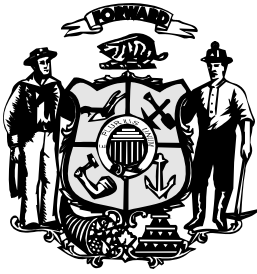
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of August, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 10, 2015.

Division of Health Care Access and Accountability